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LAND TRANSFER REFORM.

SUGGESTIONS AS TO THE QUESTION OF CONSTITUTIONALITY.

THE question of a simpler system of land transfer is attracting a good deal of attention. Experience seems to have demonstrated the practicability of such a system. The question which rises first in the mind of an American lawyer with reference to any new mode of dealing with land titles is that of constitutionality, — a question which may not have had to be considered in other countries.

The essential features of the system which prevails in some English colonies appear to be, first, a conclusive recognition of title in a given person at a given date; second, transfer thereafter, not by deed, but by a surrender of certificate and the issue of a new certificate conclusively defining the title of the new taker.

1. The initial registration of a title, or the conclusive establishment of a starting-point.

An official certificate of title, to be of final authority, must cut off all possible adverse claims. Under our system of constitutional limitations, possible adverse rights in land could not be cut off by a mere certificate of a public examiner. A special statute of limitations might be passed, limiting claims adverse to a certificated title to perhaps one or two years. Such a statute, under familiar principles, could be made to apply to existing claims. Another course would be to have the initial registration rest upon judicial proceedings. Action to establish a title conclusively in a certain person against all possible adverse claimants, known or unknown, is no novelty in our States. The principle of it is recognized in most, if not in all, of them. It is recognized in Massachusetts, for instance, in the conclusive probate of wills (Mass. Stat. 1889, c. 435), upon general notice by advertisement to all persons concerned, and more particularly in the proceedings to adjudicate upon the validity of mortgages of over twenty years' standing (Mass. Stat. 1882, c. 237); in proceedings to determine the validity and effect of conditions and restrictions of more than thirty

years' standing (Mass. Stat. 1889, c. 442); and in certain special acts, as, for example, Stat. 1861, c. 308, which provided for the taking of a certain large district in Boston by eminent domain and for an absolute bar to claims not presented within a very limited time. Many other States besides Massachusetts provide for the establishment of facts in land titles by proceedings either against specified classes of unknown persons, as, for example, unknown heirs of a person deceased,[1] or against all unknown claimants, of whatever description.[2] Some of these States, like Massachusetts, provide only for limited classes of defects; others for defects of every nature. Statutes to this end, when they provide (as of course the English equity procedure did not do) for the operation of the decree upon the land, either directly, *proprio vigore*, or by the intervention of an agent to execute releases in the name of unknown possible claimants, seem to be constitutional and effectual. Langdon *v.* Sherwood, 124 U. S. 74. See also Cook *v.* Allen, 2 Mass. 461; Crippen *v.* Dexter, 13 Gray 330; Jackson *v.* Lamphire, 3 Pet. 280; Eitel *v.* Foote, 39 Cal. 439; Jackson *v.* Babcock, 16 N. Y. 246; Sullivant *v.* Weaver, 10 Ohio 275; Parker *v.* Overmann, 18 How. 140; Pennoyer *v.* Neff, 95 U. S. 714; Gray, J., Hart *v.* Sansom, 110 U. S. 151.

We have, therefore, in our States, recognized principles of legislation, under which it is possible to establish conclusively a starting-point in a land title; and all that is needed in this respect in any given State is the extension of existing legislation.

It has been suggested by a high authority in real-estate law that possibly the State, just as it can take a whole section of a city by eminent domain, for the purpose of changing its grade, for the advancement of the public health, can take parcels of land for the purpose of clearing and registering their titles, selling the land with an indefeasible title, and holding the purchase-money for the real owners. Such a proceeding would ransack the title, like a bankruptcy or a tax sale, and make an indefeasible initial title in the new taker.

2. Subsequent transfers.

The States have the fullest power over transfers of real estate,

[1] N. Y., Civil Code, § 438; Wisc., Rev. Sts., 1878, §§ 3185, 2539, 3195; Minn. Gen. Sts., vol. I. c. 75, §§ 2–8, 32; vol. II. c. 75, § 4.

[2] Va., Code, §§ 3230, 3233; W. Va., Code, c. 124, §§ 11, 14; Col., Civil Code, §§ 45, 237.

and there seems to be no reason to doubt that they have the power to provide that transfers, instead of being made by recorded deed, shall be made by the giving up of one certificate and the issue of another, defining at the time, and once for all, the new taker's estate. In exceptional cases there would be some difficulty in ascertaining what the parties wished to do. Such cases would be rare: a vast majority of transfers are plain deeds or mortgages, perplexing, not from their contents, but from the necessity of finding them and of going through the whole train of them from a remote period. Even in cases of difficulty, it would be better to settle the questions at the time. But however this may be, it is hard to see how there can be any constitutional difficulty.

A speculative objection has been raised with reference to the constitutional power of a State to recompense persons who, under a system of conclusive certificates, may lose title. To this there are two answers. 1. It would be an entire novelty in this country to compensate persons who, after judicial notice deemed in law sufficient, are cut off. When we conclude to provide such compensation under our existing title-clearing statutes, it will be time to provide it under extension of them. 2. Experience has shown that, in practice, injury is almost never done, and that by the setting apart of a trifling portion of the fee charged for registration, a fund can be created ample to satisfy all possible claims not disclosed by the records and not brought to light by the judicial notice. It is needless, therefore, to consider the power of a State to provide indemnity. Such a discussion would only embarrass the consideration of the practical question of registration of titles.

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